Atlasburg Machine Co. d/b/a Smith Machine, Inc. *and* United Steelworkers of America, AFL–CIO–CLC. Cases 6–CA–23911 and 6–CA–24169

April 29, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

Upon charges filed by the United Steelworkers of America, AFL–CIO–CLC, the Union, in Cases 6–CA–23911 and 6–CA–24169, the General Counsel of the National Labor Relations Board on February 13, 1992, issued an order consolidating cases, consolidated amended complaint, and notice of hearing against Atlasburg Machine Co. d/b/a Smith Machine, Inc., Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and consolidated amended complaint, the Respondent has failed to file an answer.

On March 30, 1992, the General Counsel filed a Motion for Summary Judgment. On March 31, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney, by letter dated March 2, 1992, notified the Respondent that unless an answer was received three business days following receipt of the letter, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Pennsylvania corporation, with its principal office and place of business in Eighty Four, Pennsylvania, has been engaged in the manufacture and nonretail sale of steel slabs. During the 12-month period ending August 31, 1991, Respondent purchased and received goods valued in excess of $50,000 at its facility in Pennsylvania directly from points outside the Commonwealth of Pennsylvania. During this same 12-month period, Respondent sold and shipped from its Pennsylvania facility goods valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On February 2, 1987, the Union was certified as the exclusive collective-bargaining representative of the employees in the following unit appropriate for purposes of collective bargaining:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its Eighty Four, Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

Since February 2, 1987, and continuing at all relevant times, the Union has been the exclusive collective-bargaining representative of the employees in the unit pursuant to Section 9(a) of the Act.

The Respondent and the Union are parties to a collective-bargaining agreement effective by its terms from November 1, 1990, through October 31, 1991. The agreement contains the following provision:

> Deductions on the basis of authorization cards submitted to the Company shall commence with respect to dues for the month in which the Company receives such authorization card or in which cards become effective whichever is later. Dues for a given month shall be deducted from the first pay enclosed and calculated in the succeeding month, and promptly remit the same to the International Secretary-Treasurer of the Union.

The Respondent has failed to continue in effect the terms and conditions of the collective-bargaining

agreement by failing since March 31, 1991, until about November 8, 1991, to timely remit to the Union dues deducted from unit employees' wages for the months of March, April, and May 1991 and since about June 30, 1991, failing to remit to the Union dues deducted from unit employees' wages.

The Respondent has failed to continue the terms and conditions of the collective-bargaining agreement in effect without the consent of the Union. The terms and conditions of employment which Respondent has failed to continue in effect are mandatory terms and conditions of employment.

CONCLUSIONS OF LAW

By failing and refusing to continue in effect the terms and conditions of employment set forth in the parties' collective-bargaining agreement by failing to timely remit union dues from about March 31, 1991, until about November 8, 1991, for the months of March, April, and May 1991, and failing to remit deducted union dues since about June 30, 1991, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to implement and adhere to those provisions of the collective-bargaining agreement with which it has failed to comply. We shall order the Respondent to remit to the Union deducted union dues and fees owed for those unit employees who had authorized the Respondent to deduct and remit them to the Union pursuant to the parties' collective-bargaining agreement, with interest as computed under NEW HORIZONS FOR THE RETARDED, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Atlasburg Machine Co. d/b/a Smith Machine, Inc., Eighty Four, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain with United Steelworkers of America, AFL–CIO–CLC, the exclusive bargaining representative of the employees in the appropriate unit set forth below, by failing to timely remit to the Union from about March 31, 1991, until about November 8, 1991, dues deducted from unit employees' wages for the months of March, April, and May 1991, and since about June 30, 1991, failing to remit to the Union dues deducted from unit employees' wages. The unit is:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its Eight Four, Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit deducted union dues to the Union, as required by the collective-bargaining agreement, plus interest, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in Eighty Four, Pennsylvania, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain collectively with United Steelworkers of America, AFL–CIO–CLC, the exclusive collective-bargaining representative of our employees in the unit set forth below, by failing to timely remit union dues from about March 31, 1991, until about November 8, 1991, for the months of March, April, and May 1991, and failing to remit deducted union dues since about June 30, 1991. The unit is:

> All full-time and regular part-time production and maintenance employees employed by us at our Eighty Four, Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union all deducted union dues, as required by the collective-bargaining agreement, plus interest.

ATLASBURG MACHINE CO. D/B/A
SMITH MACHINE, INC.